

116TH CONGRESS
2^D SESSION

H. R. 1230

AN ACT

To amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protecting Older
3 Workers Against Discrimination Act”.

4 **SEC. 2. STANDARDS OF PROOF.**

5 (a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF
6 1967.—

7 (1) CLARIFYING PROHIBITION AGAINST IMPER-
8 MISSIBLE CONSIDERATION OF AGE IN EMPLOYMENT
9 PRACTICES.—Section 4 of the Age Discrimination in
10 Employment Act of 1967 (29 U.S.C. 623) is amend-
11 ed by inserting after subsection (f) the following:

12 “(g)(1) Except as otherwise provided in this Act, an
13 unlawful practice is established under this Act when the
14 complaining party demonstrates that age or an activity
15 protected by subsection (d) was a motivating factor for
16 any practice, even though other factors also motivated the
17 practice.

18 “(2) In establishing an unlawful practice under this
19 Act, including under paragraph (1) or by any other meth-
20 od of proof, a complaining party—

21 “(A) may rely on any type or form of admis-
22 sible evidence and need only produce evidence suffi-
23 cient for a reasonable trier of fact to find that an
24 unlawful practice occurred under this Act; and

1 “(B) shall not be required to demonstrate that
2 age or an activity protected by subsection (d) was
3 the sole cause of a practice.”.

4 (2) REMEDIES.—Section 7 of such Act (29
5 U.S.C. 626) is amended—

6 (A) in subsection (b)—

7 (i) in the first sentence, by striking
8 “The” and inserting “(1) The”;

9 (ii) in the third sentence, by striking
10 “Amounts” and inserting the following:

11 “(2) Amounts”;

12 (iii) in the fifth sentence, by striking
13 “Before” and inserting the following:

14 “(4) Before”; and

15 (iv) by inserting before paragraph (4),
16 as designated by clause (iii) of this sub-
17 paragraph, the following:

18 “(3) On a claim in which an individual demonstrates
19 that age was a motivating factor for any employment prac-
20 tice, under section 4(g)(1), and a respondent demonstrates
21 that the respondent would have taken the same action in
22 the absence of the impermissible motivating factor, the
23 court—

24 “(A) may grant declaratory relief, injunctive re-
25 lief (except as provided in subparagraph (B)), and

1 attorney's fees and costs demonstrated to be directly
2 attributable only to the pursuit of a claim under sec-
3 tion 4(g)(1); and

4 “(B) shall not award damages or issue an order
5 requiring any admission, reinstatement, hiring, pro-
6 motion, or payment.”; and

7 (B) in subsection (e)(1), by striking “Any”
8 and inserting “Subject to subsection (b)(3),
9 any”.

10 (3) DEFINITIONS.—Section 11 of such Act (29
11 U.S.C. 630) is amended by adding at the end the
12 following:

13 “(m) The term ‘demonstrates’ means meets the bur-
14 dens of production and persuasion.”.

15 (4) FEDERAL EMPLOYEES.—Section 15 of such
16 Act (29 U.S.C. 633a) is amended by adding at the
17 end the following:

18 “(h) Sections 4(g) and 7(b)(3) shall apply to mixed
19 motive claims (involving practices described in section
20 4(g)(1)) under this section.”.

21 (b) TITLE VII OF THE CIVIL RIGHTS ACT OF
22 1964.—

23 (1) CLARIFYING PROHIBITION AGAINST IMPER-
24 MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-
25 GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT

1 PRACTICES.—Section 703 of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e–2) is amended by striking
3 subsection (m) and inserting the following:

4 “(m) Except as otherwise provided in this title, an
5 unlawful employment practice is established when the
6 complaining party demonstrates that race, color, religion,
7 sex, or national origin or an activity protected by section
8 704(a) was a motivating factor for any employment prac-
9 tice, even though other factors also motivated the prac-
10 tice.”.

11 (2) FEDERAL EMPLOYEES.—Section 717 of
12 such Act (42 U.S.C. 2000e–16) is amended by add-
13 ing at the end the following:

14 “(g) Sections 703(m) and 706(g)(2)(B) shall apply
15 to mixed motive cases (involving practices described in sec-
16 tion 703(m)) under this section.”.

17 (c) AMERICANS WITH DISABILITIES ACT OF 1990.—

18 (1) DEFINITIONS.—Section 101 of the Ameri-
19 cans with Disabilities Act of 1990 (42 U.S.C.
20 12111) is amended by adding at the end the fol-
21 lowing:

22 “(11) DEMONSTRATES.—The term ‘dem-
23 onstrates’ means meets the burdens of production
24 and persuasion.”.

1 (2) CLARIFYING PROHIBITION AGAINST IMPER-
2 MISSIBLE CONSIDERATION OF DISABILITY IN EM-
3 PLOYMENT PRACTICES.—Section 102 of such Act
4 (42 U.S.C. 12112) is amended by adding at the end
5 the following:

6 “(e) PROOF.—

7 “(1) ESTABLISHMENT.—Except as otherwise
8 provided in this Act, a discriminatory practice is es-
9 tablished under this Act when the complaining party
10 demonstrates that disability or an activity protected
11 by subsection (a) or (b) of section 503 was a moti-
12 vating factor for any employment practice, even
13 though other factors also motivated the practice.

14 “(2) DEMONSTRATION.—In establishing a dis-
15 criminatory practice under paragraph (1) or by any
16 other method of proof, a complaining party—

17 “(A) may rely on any type or form of ad-
18 missible evidence and need only produce evi-
19 dence sufficient for a reasonable trier of fact to
20 find that a discriminatory practice occurred
21 under this Act; and

22 “(B) shall not be required to demonstrate
23 that disability or an activity protected by sub-
24 section (a) or (b) of section 503 was the sole
25 cause of an employment practice.”.

1 (3) CERTAIN ANTI-RETALIATION CLAIMS.—Sec-
2 tion 503(e) of such Act (42 U.S.C. 12203(e)) is
3 amended—

4 (A) by striking “The remedies” and insert-
5 ing the following:

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), the remedies”; and

8 (B) by adding at the end the following:

9 “(2) CERTAIN ANTI-RETALIATION CLAIMS.—
10 Section 107(e) shall apply to claims under section
11 102(e)(1) with respect to title I.”.

12 (4) REMEDIES.—Section 107 of such Act (42
13 U.S.C. 12117) is amended by adding at the end the
14 following:

15 “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a
16 claim in which an individual demonstrates that disability
17 was a motivating factor for any employment practice,
18 under section 102(e)(1), and a respondent demonstrates
19 that the respondent would have taken the same action in
20 the absence of the impermissible motivating factor, the
21 court—

22 “(1) may grant declaratory relief, injunctive re-
23 lief (except as provided in paragraph (2)), and attor-
24 ney’s fees and costs demonstrated to be directly at-

1 tributable only to the pursuit of a claim under sec-
2 tion 102(e)(1); and

3 “(2) shall not award damages or issue an order
4 requiring any admission, reinstatement, hiring, pro-
5 motion, or payment.”.

6 (d) REHABILITATION ACT OF 1973.—

7 (1) IN GENERAL.—Sections 501(f), 503(d), and
8 504(d) of the Rehabilitation Act of 1973 (29 U.S.C.
9 791(f), 793(d), and 794(d)), are each amended by
10 adding after “title I of the Americans with Disabil-
11 ities Act of 1990 (42 U.S.C. 12111 et seq.)” the fol-
12 lowing: “, including the standards of causation or
13 methods of proof applied under section 102(e) of
14 that Act (42 U.S.C. 12112(e)),”.

15 (2) FEDERAL EMPLOYEES.—The amendment
16 made by paragraph (1) to section 501(f) shall be
17 construed to apply to all employees covered by sec-
18 tion 501.

19 **SEC. 3. APPLICATION.**

20 This Act, and the amendments made by this Act,
21 shall apply to all claims pending on or after the date of
22 enactment of this Act.

23 **SEC. 4. SEVERABILITY.**

24 If any provision or portion of a provision of this Act,
25 an amendment or portion of an amendment made by this

1 Act, or the application of any provision or portion thereof
2 or amendment or portion thereof to particular persons or
3 circumstances is held invalid or found to be unconstitu-
4 tional, the remainder of this Act, the amendments made
5 by this Act, or the application of that provision or portion
6 thereof or amendment or portion thereof to other persons
7 or circumstances shall not be affected.

8 **SEC. 5. REPORT BY GOVERNMENT ACCOUNTABILITY OF-**
9 **FICE.**

10 Not later than 2 years after the date of the enact-
11 ment of this Act, the Government Accountability Office
12 shall submit to the Congress a report analyzing how the
13 Equal Employment Opportunity Commission investigates
14 mixed motive age discrimination claims arising under the
15 Acts amended by this Act, focusing on—

16 (1) the ability of the Commission to meet the
17 demands of its workload under such Acts;

18 (2) the plans of the Commission for inves-
19 tigating systemic age discrimination in violation of
20 such Acts;

21 (3) the plans of the Commission for litigation
22 under such Acts; and

23 (4) the options for improving the ability of the
24 Commission to respond to allegations of age dis-
25 crimination in violation of such Acts.

1 **SEC. 6. STUDY AND REPORT TO CONGRESS.**

2 Not later than 1 year after the date of the enactment
3 of this Act, the Secretary of Labor and the Equal Oppor-
4 tunity Employment Commission shall jointly conduct a
5 study to determine the number of claims pending or filed,
6 in addition to cases closed, by women who may have been
7 adversely impacted by age discrimination as a motivating
8 factor in workplace discrimination or employment termi-
9 nation. The Secretary of Labor and Chairman of the Com-
10 mission shall jointly submit to the Congress, and make
11 available to the public, a report that contains the results
12 of the study, including recommendations for best practices
13 to prevent and to combat gender and age discrimination
14 as it relates to women in the workplace.

15 **SEC. 7. REPORTS.**

16 For the 5-year period beginning on the date of the
17 enactment of this Act, the Chairman of Equal Employ-
18 ment Opportunity Commission shall submit to the Com-
19 mittee on Education and Labor of the House of Rep-
20 resentatives and the Committee on Health, Education,
21 Labor, and Pensions of the Senate a report at 1-year in-
22 tervals on the number of age discrimination in employ-
23 ment claims brought under this Act with the Equal Em-
24 ployment Opportunity Commission in the period for which
25 such report is submitted.

1 **SEC. 8. REPORT BY THE UNITED STATES COMMISSION ON**
2 **CIVIL RIGHTS.**

3 (a) REPORT.—With funds appropriated in advance to
4 carry out this section, and consistent with the operational
5 and procedural requirements of the United States Com-
6 mission on Civil Rights, the Commission shall submit to
7 the appropriate committees of the Congress a report con-
8 taining an analysis of the status of Federal mixed motive
9 age discrimination in employment claims made against
10 Federal agencies, including—

11 (1) the number of such claims, specified by the
12 Federal agency against which such claims are made;
13 and

14 (2) other related information the Commission
15 determines to be appropriate.

16 (b) SUBMISSION OF REPORT.—The report required
17 by subsection (a) shall be submitted not later than 5 years
18 after the date of the enactment of this Act.

Passed the House of Representatives January 15,
2020.

Attest:

Clerk.

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